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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

SANDRA JIMENEZ,

Case No. 3:15-cv-00128-BR

Plaintiff,

v.

**RIVERMARK COMMUNITY CREDIT
UNION, AMERICAN ASSET
RECOVERY, CHRISTOPHER PAYNE,
and ANTHONY PAYNE JR.,**

**PLAINTIFF MRS. JIMENEZ'S MOTION
TO DISQUALIFY THE FARLEIGH
WADA WITT LAW FIRM**

Oral Argument Requested

Defendants.

LR 7-1 CONFERRAL CERTIFICATION

The parties made a good faith effort, both in writing, and over the phone, to resolve this dispute and have been unable to do so. [Ex. 2]

**PLAINTIFF MRS. JIMENEZ'S MOTION TO DISQUALIFY THE FARLEIGH WADA
WITT LAW FIRM - Page 1**

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MOTION

Pursuant to this Court's inherent authority, plaintiff moves for an order disqualifying Farleigh Wada Witt (the "Farleigh firm") from defending Rivermark in this action because the Farleigh firm previously provided plaintiff legal advice about her claims against Rivermark.

Plaintiff supports this motion with the attached memorandum, declaration, and exhibits.

DATED: February 27, 2015

RESPECTFULLY FILED,

s/ Michael Fuller

Michael Fuller, Oregon Bar No. 09357

Trial Attorney for Mrs. Jimenez

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**PLAINTIFF MRS. JIMENEZ'S MOTION TO DISQUALIFY THE FARLEIGH WADA
WITT LAW FIRM - Page 2**

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CERTIFICATE OF SERVICE

I certify that on the date below, I caused this document and all attachments, including the supporting declaration and exhibits, to be served on the following persons by ECF:

**RIVERMARK COMMUNITY CREDIT UNION
C/O ATTORNEY KIM MCGAIR
kmcgair@fwlaw.com**

I certify that on the date below, I caused this document and all attachments, including the supporting declaration and exhibits, and true copies of the complaint, summons, and civil case assignment order, to be mailed to the following persons by first class USPS, postage pre-paid:

**AMERICAN ASSET RECOVERY
C/O AUTHORIZED REP. ANTHONY PAYNE JR., and
CHRISTOPHER PAYNE, and
ANTHONY PAYNE JR.
701 SE HALE PL.
GRESHAM, OR 97080**

**AMERICAN ASSET RECOVERY
C/O AUTHORIZED REP. ANTHONY PAYNE JR., and
CHRISTOPHER PAYNE, and
ANTHONY PAYNE JR.
415 NE 127TH
PORTLAND, OR 97230**

DATED: February 27, 2015

s/ Michael Fuller
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**PLAINTIFF MRS. JIMENEZ'S MOTION TO DISQUALIFY THE FARLEIGH WADA
WITT LAW FIRM - Page 3**

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Plaintiff,

v.

**RIVERMARK COMMUNITY CREDIT
UNION, AMERICAN ASSET
RECOVERY, CHRISTOPHER PAYNE,
and ANTHONY PAYNE JR.,**

Defendants.

**MEMORANDUM IN SUPPORT OF
PLAINTIFF MRS. JIMENEZ'S MOTION
TO DISQUALIFY THE FARLEIGH
WADA WITT LAW FIRM**

INTRODUCTION

Based on the points and authorities below, this Court should order the Farleigh firm to withdraw from its representation of Rivermark in this action.

**MEMORANDUM IN SUPPORT OF PLAINTIFF MRS. JIMENEZ'S MOTION TO
DISQUALIFY THE FARLEIGH WADA WITT LAW FIRM - Page 1**

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FACTUAL BACKGROUND

A. RIVERMARK HIRES THE MONSON FIRM

Rivermark initially hired the Monson Law Office P.C. firm to defend itself in this action.

[Ex. 1]

B. PLAINTIFF'S PRIOR CONSULTATION WITH THE FARLEIGH FIRM

Prior to filing this action, plaintiff had sought and obtained legal advice from the Farleigh firm about her claims against Rivermark. [Aroche Decl. ¶¶ 2-3]

Plaintiff had confided in the Farleigh firm, and the Farleigh firm advised that she had a strong case against Rivermark. [*Id.* at ¶ 5]

The Farleigh firm spoke with plaintiff's English-speaking husband on her behalf in confidence for about 10 to 20 minutes. [*Id.* at ¶ 4]

Plaintiff believed she had an attorney-client relationship with the Farleigh firm. [*Id.* at ¶ 6]

Plaintiff never would have consulted with the Farleigh firm if she knew it would represent Rivermark against her. [*Id.* at ¶ 7]

C. RIVERMARK HIRES THE FARLEIGH FIRM

On January 27, 2015, Rivermark terminated the Monson firm and hired the Farleigh Wada Witt firm to defend itself. Plaintiff immediately objected to the Farleigh firm's choice to defend Rivermark. [Ex. 2]

Plaintiff was shocked when she learned the Farleigh firm had agreed to defend Rivermark. [*Id.* at ¶ 8]

MEMORANDUM IN SUPPORT OF PLAINTIFF MRS. JIMENEZ'S MOTION TO DISQUALIFY THE FARLEIGH WADA WITT LAW FIRM - Page 2

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ANALYSIS

This Court should grant plaintiff's motion because Oregon law prohibits the Farleigh firm from continuing to defend Rivermark in this action.

A. LEGAL STANDARD

This Court must interpret the Oregon Rules of Professional Conduct ("RPC") to determine whether grounds exist to disqualify the Farleigh firm. *Gas-A-Tron of Az. v. Union Oil Co. of Cal.*, 534 F.2d 1322, 1325 (9th Cir. 1976).

"Any doubts must be resolved in favor of disqualification." *Evraz Ic., N.A. v. Williams*, 2013 U.S. Dist. LEXIS 165430, 6 (D. Or. Nov. 21, 2013).

Courts generally grant motions to disqualify when the record contains a basis for an inference that a firm learned sensitive information that may be prejudicial to a prior client. *Gas-A-Tron*, 534 F.2d at 1325 n.2.

B. OREGON RULES OF PROFESSIONAL CONDUCT

The RPC prohibit the Farleigh firm from representing Rivermark in this action if the Farleigh firm previously had an implied attorney-client relationship with an adverse party. RPC 1.7, 1.9; *In re Weidner*, 310 Or. 757, 768, 801 P.2d 828 (1990).

Whether the Farleigh firm had an implied attorney-client relationship with plaintiff in this case is based on whether plaintiff had a subjectively reasonable belief she was receiving professional legal advice from the Farleigh firm. *Id.* at 770.

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MEMORANDUM IN SUPPORT OF PLAINTIFF MRS. JIMENEZ'S MOTION TO DISQUALIFY THE FARLEIGH WADA WITT LAW FIRM - Page 3

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**C. THIS COURT SHOULD GRANT PLAINTIFF'S MOTION BECAUSE
(1) SHE REASONABLY BELIEVED SHE WAS RECEIVING LEGAL
ADVICE FROM THE FARLEIGH FIRM, AND (2) THE FARLEIGH
FIRM'S CONTINUED REPRESENTATION OF RIVERMARK MAY
PREJUDICE PLAINTIFF**

The two-part disqualification test in *Weidner* is met in this case because plaintiff reasonably believed she had an attorney-client relationship with the Farleigh firm.

Plaintiff's subjective belief that she had an attorney-client relationship with the Farleigh firm was reasonable because (a) the Farleigh firm regularly advises clients about these types of cases, (b) plaintiff was referred to the Farleigh firm based on its reputation for advising clients about these types of cases, (c) the Farleigh firm asked questions for 10 to 20 minutes as plaintiff's husband provided it confidential information about her case, and because (d) plaintiff did in fact receive legal advice from the Farleigh firm about the strength of her case against Rivermark.

The "prejudicial" factor cited in the *Gas-A-Tron* opinion should be resolved in favor of plaintiff because as a party opponent, plaintiff's interests are *per se* materially adverse to Rivermark's in this matter. In addition to creating a strong appearance of impropriety, allowing the Farleigh firm to remain in this case could cause prejudice to plaintiff if the confidential information shared with it is used against her, or revealed to Rivermark.

As noted in the *Evraz* opinion, if any doubt exists as to the facts surrounding the conversation between plaintiff's husband and the Farleigh firm, the doubt must be resolved in favor of disqualification.

For these reasons, plaintiff's motion should be granted.

**MEMORANDUM IN SUPPORT OF PLAINTIFF MRS. JIMENEZ'S MOTION TO
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CONCLUSION

For the reasons above, this Court should order the Farleigh firm to withdraw from its representation of Rivermark in this action.

DATED: February 27, 2015

s/ Michael Fuller

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**MEMORANDUM IN SUPPORT OF PLAINTIFF MRS. JIMENEZ'S MOTION TO
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